IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA ASHEVILLE DIVISION 1:05CV286-03-MU

SHAWN LEE LEGRAND,)
Plaintiff,)
v.	$\underbrace{\mathbf{ORDER}}_{\mathbf{N}}$
DANIELLE B. SHAW and PHYLLIS BUCHANAN)))
Defendants.)))

THIS MATTER comes before the Court upon Plaintiff's Motion for Appointment of Counsel, (Document No. 20) and Plaintiff's "Motion for Continuance of Stay (Document No. 22) both filed November 18, 2005.

Plaintiff has requested that this Court appoint him counsel to assist him with prosecuting his case. Appointment of counsel under § 1915(e)(1) in cases brought under 42 U.S.C. § 1983 is discretionary. Whisenant v. Yuan, 739 F.2d 160, 163 (4th Cir. 1984). Counsel should be appointed in "exceptional circumstances." Id.; Cook v. Bounds, 518 F.2d 779 (4th Cir. 1975). The existence of "exceptional circumstances" depends upon two factors: type and complexity of case and ability of pro se litigant to present case. Whisenant, 739 F.2d at 163. At this time, the Court does not construe this as a complex case and notes that the Plaintiff is adequately representing himself.

Plaintiff has also requested a continuance or stay in order to "get discovery and interrogatories from Defendants and allow Plaintiff a chance to request counsel." Given that Plaintiff's motion for counsel has been denied and Plaintiff's medical records have been attached to Defendants' Motion for Summary Judgment, Plaintiff's Motion for a Continuance or Stay will be

denied at this time. If Plaintiff needs additional time to gather some specific piece of evidence to rebut Defendants' Motion for Summary Judgment he may make a further motion. However, should Plaintiff find it necessary to make such a motion, he must clearly articulate the specific information he needs and explain why it is necessary and what he is rebutting with that evidence. Further, he must outline what steps he has taken to obtain this information.

IT IS HEREBY ORDERED that Plaintiff's Motion for the Appointment of Counsel (Document No. 20) and Motion for Continuance or Stay (Document No. 22) are DENIED.

Signed: November 22, 2005

Graham C. Mullen Chief United States District Judge